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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/675,860	09/29/2000	MARTIN M. BARRERA	NOVE100010000/NVLS-2337	9366

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Delio & Peterson , LLC  
121 Whitney Avenue  
New Haven, CT 06510

EXAMINER
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KIM, CHRISTOPHER S

ART UNIT	PAPER NUMBER
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3752

MAIL DATE	DELIVERY MODE
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11/14/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte:* MARTIN BARRERA and ALEX SPENCER

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Application No. 09/675,860  
Technology Center 3700

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Mailed: November 14, 2008

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Before TOI JOHNSON *Review Paralegal*  
JOHNSON, *Review Paralegal*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on September 22, 2008. A review of the application revealed that it is not ready for docketing as an appeal.

Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

APPEAL BRIEF, SUMMARY OF CLAIMED SUBJECT MATTER

Appellant filed an Appeal Brief dated October 4, 2007. The Appeal Brief is not in compliance with 37 CFR § 41.37(c) effective September 13, 2004.

According to 37 CFR § 41.37(c) (v), an Appeal Brief must include the following:

(v) *Summary Of Claimed Subject Matter.* A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which must refer to the specification by page and line number, and to the drawing, if any, by reference characters. While reference to page and line number of the specification \*\*>requires< somewhat more detail than simply summarizing the invention, it is considered important to enable the Board to more quickly determine where the claimed subject matter is described in the application. >For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of 37 CFR 41.37(c)(1)(vii), every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

The “Summary of claimed subject matter” appearing on pages 5-8 of the Appeal Brief filed October 4, 2007 is deficient because it does not separately map independent claims 1, 13, 28 and 31 to the specification. Correction is required.

MPEP § 1205.03 states in part:

(B) When the Office holds the brief to be defective solely due to appellant's failure to provide a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v), an entire new brief need not, and should not, be filed. Rather, a paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v) will suffice. Failure to timely respond to the Office's requirement will result in dismissal of the appeal. See MPEP § 1215.04 and § 711.02(b).

### APPEAL BRIEF, GROUNDS OF REJECTION

A review of the file finds that the grounds of rejection of the claims as provided in the Appeal Brief filed October 4, 2007 under the heading "Grounds of rejection to be reviewed on appeal" is not consistent with the grounds of rejection of claims of record. The grounds of rejection of the claims as provided in the Appeal Brief must be consistent with the last Office action of record. Each Grounds of rejection to be reviewed on appeal must be identified.

A review of the last Office action finds that claims 1-5, 7-10, 12-17, 19-21 and 26-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gwyn and Holt. However, Appellants have not indicated the grounds of rejection for claims 2, 12 and 14. Correction of the Grounds of rejection to be reviewed on appeal for all claims is required.

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

- 1) hold the Appeal Brief filed October 4, 2007 defective, as required by 37 CFR § 41.37(d);
- 2) notify the Appellant to submit a “paper” which corrects the Appeal Brief’s Summary of Claimed Subject Matter and Grounds of Rejection to be Reviewed on Appeal under 37 CFR §41.37;
- 3) acknowledge and consider any “paper” submitted by Appellant to correct the Appeal Brief; and
- 4) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

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